IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
January 10, 2023 Session

WILLIAM GOETZ v. DONEL AUTIN ET AL.

Appeal from the Circuit Court for Shelby County
No. CT-001100-19 Robert Samual Weiss, Judge

No. W2022-00393-COA-R3-CV

The trial court dismissed Appellant's action for aggravated perjury for failure to state a claim under Tennessee Rules of Civil Procedure 12.02(6); the trial court dismissed Appellant's action for spoliation of evidence as barred by the doctrine of res judicata. The trial court also assessed sanctions against Appellant's attorney pursuant to Rule 11 of the Tennessee Rules of Civil Procedure. Discerning no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded

KENNY ARMSTRONG, J., delivered the opinion of the court, in which W. NEAL MCBRAYER, J., and ROY B. MORGAN, JR., SP. J., joined.

Larry E. Parrish, Memphis, Tennessee, for the appellant, William Goetz.

John Lewis Wardlaw, Memphis, Tennessee, for the appellees, Donel Autin and Dana Autin.

OPINION

This appeal arises from an on-going battle between former neighbors. The parties have litigated their grievances for more than a decade, and this is the fifth appeal to this Court. *See* ***In re Mar. 9, 2012 Ord.***, 637 S.W.3d 708 (Tenn. Ct. App. Dec. 22, 2020), *perm. app. denied* (Tenn. April 8, 2021) ("***Goetz IV***"); ***In re Mar. 9, 2012 Ord.***, No. W2016-02015-COA-R3-CV, 2017 WL 2304842 (Tenn. Ct. App. May 26, 2017) ("***Goetz III***"); ***Autin v. Goetz***, 524 S.W.3d 617 (Tenn. Ct. App. 2017) ("***Goetz II***"); ***Goetz v. Autin***, No. W2015-00063-COA-R3-CV, 2016 WL 537818 (Tenn. Ct. App. Feb. 10, 2016), *perm.*

app. denied (Tenn. June 24, 2016) ("***Goetz I***").[1] Some of the history related to the prior appeals is germane to the instant appeal. We now turn to the relevant factual and procedural history.

I. FACTUAL AND PROCEDURAL HISTORY

In March 2010, Appellees Donel Autin and his wife, Dana Autin (together, "the Autins"), filed a cause of action against Appellant William Goetz ("Mr. Goetz"). The Autins "alleged that Mr. Goetz was guilty of defaming, slandering, and intentionally inflicting emotional distress on [them] by falsely communicating to third parties that Mr. Autin had an adulterous sexual relationship with Mr. Goetz's former live-in girlfriend ("Girlfriend")." ***Goetz II***, 524 S.W.3d at 620. The Autins sought damages, an immediate temporary restraining order, a temporary injunction, and a permanent injunction. Protracted discovery ensued, and, in October 2010, the Autins filed a motion for a protective order sealing various transcripts and recordings. ***Id.*** at 621. In November 2010, the trial court entered an order sealing "the entire case." ***Id.*** Despite admonishments by the trial court, the parties' discovery disputes escalated to the point that the trial court indicated that it would "hammer" those responsible for "creating [the] mess" with sanctions. ***Id.*** at 621-22.

Notwithstanding the trial court's admonishment, further disputes arose, including disputes over the retrieval of texts and data from the Autins' cellphones. ***Id.*** at 623. In February 2012, Mr. Goetz filed a motion to dismiss the Autins' "lawsuit on the basis of spoliation of evidence." ***Id.*** "According to Mr. Goetz, [the Autins'] failure to produce all text messages as ordered was the result of spoliation and was of a nature and character necessitating dismissal of the lawsuit. Mr. Goetz's motion and memorandum were accompanied by several documents that Mr. Goetz asserted supported his spoliation theory." ***Id.*** In March 2012, the Autins filed a notice of voluntary nonsuit, and the trial court dismissed the matter without prejudice. ***Id.*** The trial court also ordered that the case would remain "sealed in perpetuity." ***Id.*** at 624.

In April 2012, Mr. Goetz filed a motion to alter or amend the trial court's order dismissing the case and asserted that the court should lift the protective seal in order to permit Mr. Goetz to defend his reputation regarding the Autins' "frivolous and oppressive litigation." ***Id.*** In August 2012, the trial court entered an amended order dismissing the matter without prejudice and modifying the seal to except the orders of the court. The

[1] ***Goetz III*** was designated as a "Memorandum Opinion" pursuant to Rule 10 of the Rules of the Court of Appeals of Tennessee. Under Rule 10, a Memorandum Opinion may not be citied or relied on in any unrelated case. However, with respect to the parties, a Rule 10 Memorandum Opinion may serve as "the basis for a claim of res judicata, collateral estoppel, law of the case, or to establish a split of authority[.]" Tenn. R. Sup. Ct. Rule 4(E)(2); *See, e.g.,* ***In re Conservatorship of Acree***, No. M2013-02588-COA-R3-CV, 2014 WL 2625472, at *2 (Tenn. Ct. App. June 11, 2014).

August 2012 order further noted that

> [a]ll documents or other information received by Counsel for Defendant William Goetz from AT & T and/or Verizon as a result of subpoenas and/or all summaries of the documents bearing any identifiable information, which documents were previously ordered to be conspicuously marked and held by counsel for Goetz as ATTORNEYS EYES ONLY and which were ordered not to be shared for any reason or in any manner with Goetz, or anyone else, at any time during the pendency of or after the conclusion of this matter, shall not be destroyed or returned to Plaintiffs' counsel as previously ordered, but shall remain conspicuously marked and held by counsel for Goetz as ATTORNEYS EYES ONLY, and shall not to be shared for any reason or in any manner with Goetz, or anyone else, at any time during the pendency of or after the conclusion of this matter.

Id. The August 2012 order was not appealed.

In May 2012, which was before entry of the final judgment in the 2010 lawsuit that was pending in Division IV of the Circuit Court for Shelby County, Mr. Goetz filed a separate lawsuit against the Autins and Mr. Autin's employer, International Paper. This action was heard by Division II of the circuit court. ***Goetz I***, 2016 WL 537818. The Autins filed a motion to dismiss for failure to state a claim; while their motion was pending, Mr. Goetz amended his complaint in October 2012. In his amended complaint, Mr. Goetz asserted causes of action for defamation, malicious prosecution, abuse of process, and intentional infliction of emotional distress. ***Id.*** at *1. Mr. Goetz asserted that the Autins' 2010 lawsuit lacked a reasonable basis and was intended to obscure Mr. Autin's alleged affair with Girlfriend. ***Id.*** Mr. Goetz prayed for damages in the amount of $150,000 for attorney's fees and $1,000,000 in punitive damages. ***Id.*** Mr. Goetz also asserted that International Paper wrongfully and intentionally concealed cell phone records that were relevant to the 2010 lawsuit. ***Goetz II***, 524 S.W.3d at 625. However, International Paper was dismissed by consent order entered on November 2, 2012. ***Goetz I***, 2016 WL at *1 n.1. On November 26, 2012, the Autins filed a motion to dismiss for failure to state a claim. The trial court dismissed the matter with prejudice by order entered on September 25, 2013. ***Id.*** at *3. On October 25, 2013, Mr. Goetz filed a motion purporting to be a motion to alter or amend the judgment pursuant to Tennessee Rule of Civil Procedure 59.04. In his motion, Mr. Goetz asserted that the trial court erred by dismissing the matter and asserted, for the first time, that his amended complaint stated claims for civil rights violations and conspiracy. ***Id.*** In November 2014, the trial court ruled that Mr. Goetz's post-judgment motion was not a motion to alter or amend the judgment but was a motion to reconsider. It denied the motion by order of November 21, 2014. ***Id.*** Mr. Goetz filed a notice of appeal to this Court, and we affirmed the trial court's judgment. ***Id.*** at *12.

In the meantime, in September 2012 the parties filed cross-motions for contempt arising from alleged violations of the court's August 2012 order sealing the record in the lawsuit filed by the Autins in 2010. ***Goetz II***, 524 S.W.3d at 625. Following additional discovery, by order of January 4, 2013, the trial court (Division IV) determined that the parties had not alleged criminal contempt and that the allegations in the petitions "cannot be fairly the subject of civil contempt." ***Id.*** The trial court did not rule on the petitions but held them in abeyance "until such time as the [c]ourt determines whether . . . to bring sua sponte criminal contempt charges against either or both of the parties." ***Id.*** The court observed that neither party had appealed its order sealing the case and that the "case was sealed for a reason—to protect Appellees' minor children[.]" The trial court ruled:

> 4. With the following limited exceptions, the parties should leave what is in this matter alone:
>
> a. The parties are allowed to use the pleadings and other documents from this case for the limited purpose of prosecuting and defending the pending matter in Division 2 (No. Ct–002218–12). This limited exception to the seal is not intended to and does not authorize the parties to use or discuss the sealed materials outside of the Division 2 litigation.
>
> b. The parties are allowed to use the pleadings and other documents from this case for the limited purpose of facilitating International Paper Co.'s pending investigation of Donel Autin until such time as that investigation is completed. This limited exception to the seal is limited to International Paper "individuals with a need to know" and is not intended to and does not authorize the parties to use or discuss the sealed materials outside of the International Paper investigation. Absent a further order of this [c]ourt, Mr. Goetz may not speak at the International Paper Co., Inc. annual shareholders meeting about any matters sealed in this Court.
>
> 5. The [c]ourt instructs all parties that under no circumstances do they have permission to discuss the case beyond what is expressly allowed in this order.

Id. at 625-26.

In May 2015, "Mr. Goetz filed a motion to modify the trial court's protective order, arguing that circumstances had changed such that allowing public disclosure of the facts at issue would no longer create such a risk of harm to Appellees' minor children." ***Goetz II***, 524 S.W.3d at 626. Mr. Goetz asserted that "modification of the protective order was also necessary to clear his reputation in the community" and "that much of the information he gleaned in the case was obtained outside of formal discovery processes." He further asserted "that the seal 'implicates the highest scrutiny under the First Amendment.'" ***Id.*** The Autins responded in opposition to Mr. Goetz's motion, and, in August 2015, the trial

court denied Mr. Goetz's request for a hearing on the matter until the conclusion of his appeal in ***Goetz I***. ***Id.***

In September 2015, Mr. Goetz filed a motion for sanctions against the Autins pursuant to Rule 11 of the Tennessee Rules of Civil Procedure. ***Id.*** at 626-27. In his motion, Mr. Goetz alleged that the Autins had made false allegations against him in their response to his motion to modify the protective seal. ***Id.*** at 627. He sought "all fees incurred . . . in defense of [the Autins'] fraudulent lawsuit." ***Id.*** The Autins responded in opposition to the motion, and Mr. Goetz withdrew his motion. ***Id.*** The trial court entered an order denying the motion for sanctions as moot. ***Id.***

In December 2015, the trial court entered its final order, wherein it denied Mr. Goetz's request for modification of the protective order. ***Id.*** Specifically, the trial court ruled:

> 1. This case was filed in 2010. The case has now been closed effectively almost three years. There was no appeal from the rulings in this case.
>
> 2. Mr. Goetz filed a second lawsuit in Division II of the Circuit Court, which was dismissed on motions and is now on appeal. Mr. Goetz did not choose to file an appeal that said he disagreed with anything this [c]ourt did. He simply chose to file a separate lawsuit.
>
> 3. This [c]ourt['s] rulings are res judicata, and the [c]ourt is not going to accept the request to modify its prior rulings.
>
> 4. The pleadings were sealed[ ] but not the orders. The parties clarified their intent in two orders in the litigation in 2012.
>
> 5. Mr[.] Goetz was represented by counsel[.] He has had an opportunity to have his day in court, both in Division IV and in Division II. The [c]ourt believes he took advantage of that opportunity to the extent he wanted to.
>
> 6. Mr. Goetz had an opportunity to file an appeal. He elected not to do that. The [c]ourt is not inclined, three years later, to deal with those issues again.

Id. Mr. Goetz filed a timely notice of appeal to this Court and raised three issues for review (as we slightly restated them):

> 1. Does a trial court retain jurisdiction to enter a permanent injunction in favor of a plaintiff after the plaintiff files a notice of nonsuit?
>
> 2. Did the trial court err by granting relief of a permanent injunction after

applying a legal standard properly limited to protective orders?

3. Did the trial court err by refusing to consider evidence of changed circumstances material to an ongoing order?

Id. at 628.

On appeal, this Court determined that the trial court had continuing jurisdiction over the protective order, which was in place when the Autins filed their notice of nonsuit. ***Id.*** at 634. In so holding, the ***Goetz II*** court noted "that a nonsuit does not take effect until the entry of the order of nonsuit, rather than at the time the notice of voluntary dismissal is filed." ***Id.*** at 637 (citing ***see Green v. Moore***, 101 S.W.3d 415, 419-420 (Tenn. 2003)). The ***Goetz II*** court determined that Mr. Goetz's appeal challenging the legal standard applied by the trial court in its August 2012 order was not properly before it. ***Id.*** at 638-39. This Court determined, however, that the trial court erred by dismissing Mr. Goetz's motion to modify its protective order on the basis that it was barred by the doctrine of *res judicata* ***Id.*** at 640-41. The ***Goetz II*** court stated:

> Because modification of protective orders has been expressly authorized by our supreme court, res judicata will not serve as a bar to modification so long as the movant can show the quantum of proof required to support modification. . . . The trial court therefore erred in refusing to even consider Mr. Goetz's proof to determine whether a modification was warranted under the standard.

Id. at 640 (citation omitted). Accordingly, the ***Goetz II*** court vacated the trial court's order denying Mr. Goetz's request for modification of the protective order and remanded the matter for further proceedings. ***Id.***

In November 2015, under a different docket number, Mr. Goetz instituted an additional proceeding styled "In Rem Petition to Vacate March 9, 2012 'Order.'" ***Goetz III***, 2017 WL 2304842, at *1. In his petition, Mr. Goetz asserted "that the March 9, 2012 order was the 'res' of the in rem proceeding and that no parties were named as defendants or served with summons." ***Id.*** As we summarized in ***Goetz III***:

> The In Rem Petition asked the court to declare the March 9, 2012 order void ab initio on the basis that the circuit court lacked jurisdiction to adjudicate any matters from the moment the Autins' written notice of nonsuit was presented to the court, with the exception of entering a ministerial pro forma order confirming "the already effectuated dismissal." In other words, the In Rem Petition asserted that the Autins' defamation case was effectively dismissed at the moment the notice of nonsuit was delivered, and therefore, the trial court lacked authority to include a ruling in its order of dismissal that

> the protective order would remain in effect. The In Rem Petition also contended that the trial court's March 9, 2012 order extending the protective order was essentially a permanent injunction that restrained Goetz in violation of his constitutional rights to free speech. The In Rem Petition requested that the March 9, 2012 order be declared void and stricken from the record of the court.

Id. The Autins, who had not been served with Mr. Goetz's petition, filed a motion to intervene in the matter, and the trial court granted their motion in July 2016. ***Id.*** at *2. Mr. Goetz "began to insist that the In Rem Petition he filed was 'mislabeled' as an 'independent action,' and that it was actually a Rule 60.02 'motion,' despite the fact that it was filed under a separate docket number and case style." ***Id.***

In September 2016, the trial court dismissed the In Rem Petition with prejudice. ***Id.*** The trial court noted that Mr. Goetz's attempt to proceed through the In Rem Petition was an attempt to seek "the same relief he requested via a different case and a different docket number[.]" ***Id***. The trial court concluded that Mr. Goetz's petition was a distinct action as opposed to a Rule 60.02 motion; therefore, the trial court concluded that a summons and service on the Autins was required. ***Id.*** The trial court dismissed the petition on the doctrine of res judicata. The trial court further observed: "No case begs for finality more than this case. The cost to these parties thus far, for attorneys' fees, is simply unconscionable." ***Id.*** Mr. Goetz filed a notice of appeal to this Court in September 2016. ***Id.***

This Court issued its Opinion in ***Goetz II*** while Mr. Goetz's September 2016 appeal was pending. In ***Goetz III***, we affirmed the trial court's dismissal on the doctrine of res judicata. ***Id.*** at *5. The ***Goetz III*** Court noted:

> For all of the parties' disputes over whether this Rule 60 proceeding should be construed as a motion or an independent action, or a proceeding in rem versus a proceeding in personam, it is easy to lose sight of the substantive issues that Goetz raised in his so-called In Rem Petition. Essentially, he asked the court to declare the March 9, 2012 order void ab initio on the basis that the trial court instantaneously lost jurisdiction to adjudicate any matters regarding the protective order at the moment that the Autins delivered their notice of nonsuit. Goetz argued that the protective order was null and void and in violation of his constitutional rights to free speech. This Court considered and rejected these very same arguments in [***Goetz II***]. Not only did we address in general the effect of a nonsuit on the ability of a trial judge to extend a protective order, we specifically held that the March 9, 2012 order entered in the original Autin–Goetz litigation is not void for the very same reasons asserted by Goetz in this proceeding. For the reasons stated by this Court in [***Goetz II***], we again conclude that the March 9, 2012 order

> extending the protective order is not void for lack of subject matter jurisdiction.

Id. at *4 (citing Tenn. R. Sup. Ct. 4(G)(1) ("An unpublished opinion shall be considered controlling authority between the parties to the case when relevant under the doctrines of the law of the case, res judicata, [and] collateral estoppel" and "for all other purposes shall be considered persuasive authority"); ***Creech v. Addington***, 281 S.W.3d 363, 383 (Tenn. 2009) ("[U]nder the law of the case doctrine, an appellate court's decision on an issue of law is binding in later trials and appeals of the same case if the facts on the second trial or appeal are substantially the same as the facts in the first trial or appeal.")).

The ***Goetz III*** court also determined that Mr. Goetz's appeal was frivolous and devoid of merit and granted the Autins' prayer for attorney's fees on appeal pursuant to Tennessee Code Annotated section 27-1-122. ***Id.*** at *5. The matter was remanded to the trial court to determine the amount of attorney's fees. ***Id.***

On remand, by order entered in June 2019, the trial court ordered Mr. Goetz to pay the Autins attorney's fees in the amount of $11,901.35. ***Goetz IV***, 637 S.W.3d at 709-10. In July 2019, Mr. Goetz filed a 59-page motion to alter or amend the judgment and asserted, "for the first time, that the trial court's order was 'void *ab initio*' because it was 'adjudicated by an adjudicator with compromised neutrality in violation of the Fourteenth Amendment[.]'" ***Id.*** "The trial court treated this as a request for recusal "embedded" in the motion to alter or amend and denied the motion in all respects." ***Id.*** at 710. Mr. Goetz appealed, and this Court affirmed the trial court's judgment. ***Id.***

The current appeal arises from a petition filed by Mr. Goetz on March 13, 2019, as amended on March 14, 2019. In his "First Amended Petition for Criminal Contempt" ("petition" or "2019 petition"), Mr. Goetz asserted that "Petitioner, at all times relevant to the instant claim for relief, was and remains a *sui juris* adult human person[]" and "a resident citizen of Shelby County, Tennessee." In his petition, Mr. Goetz further asserted that, "in furtherance of [a] 703 Fraud Against State[,]" the Autins, "on May 12, 2010, initiated an official proceeding, by an oath-made complaint, which included no prayer for monetary relief" in a "civil lawsuit proceeding" against him. Mr. Goetz asserted that the Autins had committed "aggravated perjury in violation of Tennessee Code Annotated section 39-16-703(a), a Class D felony . . . used to further a fraud . . . on the State of Tennessee . . . by and through State's agencies, *i.e.*, Shelby County, Tennessee Chancery Court, the Shelby County, Tennessee Circuit Court and the Tennessee Court of Appeals[.]" In his complaint, Mr. Goetz submitted that

> [t]he ultimate object of the 703 Fraud Against State (hereinafter **"703 Fraud Against State Ultimate Object"**) (*infra* at paragraphs 13, 15, 82, 84) continued up through **January 30, 2019** (*infra* at paragraph 22) was to use the 703 Aggravated Perjury (*supra* at paragraph 9) to trick and deceive State

> (*supra* at paragraph 9), by and through the State's Agencies (*supra* at paragraph 9), to accept the 703 Aggravated Perjury (*supra* at paragraph 9) as the truth and, based on the acceptance of the 703 Aggravated Perjury (*supra* at paragraph 9) as truth, to exercise the force and the threat of force of State (e.g., incarceration) (*infra* at paragraph 89) and to use a prior restraint to censor the right of Petitioner (guaranteed by the First Amendment, United States Constitution, and Tennessee Constitution, Article I, § 19) to speak the truth (hereinafter **"Petitioner's Free Speech Right To Speak The Truth"**) (*infra* at paragraphs 81, 84, 88, 89).

(Emphases in original).

Mr. Goetz asserted that, by their "perjured" complaint, the Autins wrongfully invoked "the State's force and authority . . . to order Petitioner to submit Petitioner's person to the jurisdiction (authority) of State Agency/Chancery Court . . . to invoke State force and authority . . . at the discretion of State's Agency/Chancery Court . . . to require Petitioner to do or not to do what State Agency/Chancery Court . . . directed Petitioner to do or not to do[.]" (Emphases in original).

In his petition, which "Reserved" several numbered paragraphs, Mr. Goetz recited some of the text messages allegedly exchanged between Mr. Autin and Girlfriend; according to Mr. Goetz, these messages were evidence of an extramarital affair. In summation, Mr. Goetz asserted that the Autins: (1) "perjured" themselves in their 2010 complaint and in court; (2) spoiliated cellphone evidence sought by Mr. Goetz in discovery; and (3) continued to wrongfully use the courts to "deprive Petitioner from exercising Petitioner's Free Speech Right To Speak The Truth[.]" In his prayer for relief, Mr. Goetz sought: (1) a finding that the Autins were in criminal contempt of court; (2) "a judgment . . . imposing such punishment as the [c]ourt determines is appropriate, equal to the ordinary punishment for a Class D Felony"; (3) reimbursement of "(1) attorneys' fees and costs incurred in defending the aforesaid fraudulently made claims and accusations, (2) in securing restoration of Petitioner's constitutional right to free speech guaranteed by the First Amendment, United States Constitution and Tennessee Constitution, Art 1, Section 19 and (3) preparation and prosecution of this petition, in an amount of no less than five hundred thousand ($500,000) dollars, with the amount continuing to increase as long as this case continues to require prosecution; and (4) any other relief deemed just and proper by the court.

On April 17, 2019, the Autins filed a motion to dismiss Mr. Goetz's petition for failure to state a claim and for lack of subject-matter jurisdiction. Specifically, the Autins asserted that the circuit court did not have subject-matter jurisdiction over the criminal offense of aggravated perjury. The Autins further asserted that: (1) Mr. Goetz did not properly initiate the criminal proceedings; (2) his allegations did not support "civil claims for aggravated perjury or spoliation"; (3) Mr. Goetz's claims were barred by the applicable

statutes of limitations; and (4) negotiations and offers made during court-ordered mediation in earlier litigation were privileged and protected. The Autins also asserted that Mr. Goetz's claims were barred by the doctrine of res judicata and the established law of the case. On May 21, 2019, the Autins filed a motion for sanctions pursuant to Tennessee Rule of Civil Procedure 11 ("Rule 11"). In their motion, the Autins asserted that Mr. Goetz's March 14 petition was filed in violation of Tennessee Rules of Civil Procedure Rule 11.02, discussed *infra*. The Autins attached, to their motion, the trial court's revised ruling of August 16, 2013, and the court's January 2019 order on Mr. Goetz's motion to modify the 2012 order sealing the matter in perpetuity. In their motion for sanctions, the Autins repeated the grounds asserted in their motion to dismiss. They submitted that Mr. Goetz's petition reiterated the allegations that Mr. Goetz had made in previous litigation and that "only the relief demanded [was] different." They asserted that the petition was barred by the doctrine of res judicata and that:

> By thinly-disguising his allegations in criminal contempt and aggravated perjury, Goetz inappropriately seeks to resurrect long-dismissed abuse of process, malicious-prosecution, defamation, spoliation, and other claims, which he now recasts as a "Fraud Against-the State."

The Autins also asserted that, in a November 14, 2018 petition for criminal contempt, which Mr. Goetz voluntarily dismissed in January 2019, Mr. Goetz purported to "come by and through the undersigned District Attorney General for the Thirtieth District of Tennessee on relation of William Goetz (Nov. 14, 2018 Contempt Pet. (CT:005191-71-8)-71)." They further asserted that, in his March 13, 2019 contempt petition, Mr. Goetz "again purported to 'come by and through the undersigned District Attorney General for the Thirtieth District of Tennessee on relation of William Goetz[.[]'"). They submitted, "[n]otably, Goetz dropped this *ex rel* strategy in his March 14, 2019 Amended Contempt Petition, and purports to sue the Autins in his own name only." The Autins maintained that the trial court "[did] not have jurisdiction to hear a felony criminal case in the manner attempted by Goetz—whether directly or *ex rel*."

In addition to the jurisdictional defects, the Autins also asserted that Mr. Goetz had followed neither the procedure for bringing a criminal perjury action set-forth in Tennessee Code Annotated section 40-3-101, nor the Tennessee Rule of Criminal Procedure 42 procedures, which govern criminal contempt proceedings arising out of civil actions. The Autins submitted that Tennessee does not recognize civil claims for spoliation or aggravated perjury. They also submitted that the four-year statute of limitations for a Class D felony set-forth at Tennessee Code Annotated section 40-2-101(b)(3) barred any claims for actions that occurred before November 14, 2014. The Autins prayed for dismissal of Mr. Goetz's petition, attorney's fees, and costs. They also prayed for an award of monetary sanctions against Mr. Goetz and other relief as deemed necessary by the court.

On May 31, 2019, Mr. Goetz filed a pleading styled "Notice of Partial Nonsuit Without Prejudice[.]" The trial court did not enter an order on the pleading. On June 6, Mr. Goetz filed a response to the Autins' motion to dismiss. On July 7, 2019, Mr. Goetz filed a pleading styled "First Amended Petition for Criminal Contempt (With Nonsuited Prayer for Relief Omitted)[.]"

Following a hearing on March 1 and March 18, 2021, the trial court granted the Autins' motion to dismiss for failure to state a claim and for lack of subject-matter jurisdiction by order entered September 29, 2021.[2] In its order, the trial court determined that there is no civil action for aggravated perjury in Tennessee and that "the only appropriate venue for pursuing the criminal claim would be in the criminal courts via the Shelby County District Attorney." The court found that the District Attorney had declined to bring the suit and that "[w]hile [Mr. Goetz] argued that this matter was being brought solely for the vindication of the Courts and it was not about him at all this is contrary to the pleadings." The court also determined that, although not "explicitly stated" by this Court or the Tennessee Supreme Court, the federal courts have held that Tennessee does not recognize an independent cause of action for spoliation of evidence. The trial court also found that it had not entered an order on Mr. Goetz's notice of nonsuit, and accordingly determined that the petition filed by Mr. Goetz in July 2019 was not before it. The court determined that Mr. Goetz's March 14, 2019 petition failed to state a claim on which relief can be granted and that Mr. Goetz did not have standing to bring the claims asserted in his petition for contempt. The trial court dismissed Mr. Goetz's petition with prejudice and reserved the Autins' motion for sanctions and prayer for attorney's fees pursuant to section 20-12-119.

On October 14, 2021, Mr. Goetz filed a Tennessee Rule of Civil Procedure 59.04 motion to alter or amend the trial court's judgment. In his motion, Mr. Goetz asserted that: (1) the trial court erred by ruling that his May 2019 notice of partial nonsuit was not effective when filed; (2) the only petition properly before the court was Mr. Goetz's July 29, 2019 petition; (3) the trial court's order did not adjudicate the merits of that petition; (4) "there is a sense in which the July 29 Petition is of no consequence in that, had the July 29 Petition never been filed, the March 14 Amended Petition would have remained before the Court with the prayer for relief nonsuited"; (5) "the substantive significance of the July 29 Petition was to restate, precisely, the claims made in the March 14 Amended Petition, without the prayer for relief"; and (6) "the July 29 Petition was not a new or a second amendment, which would have required leave of Court but a restatement of the March 14 Amended Petition without the nonsuited prayer for relief." Mr. Goetz also asserted that the trial court erred by dismissing the matter with prejudice because

[2] It appears from the record that the matter was transferred from Division II to Division VIII of the Circuit Court in October 2019.

> a dismissal "pursuant to Tenn. R. Civ. R 12.02(6)" is not a dismissal "with prejudice" because the only holding is that the pleading before the Court does not state a claim but does not preclude the possibility that a claim stated in another pleading would be sufficiently pled, e.g., a claim stated in the July 29 Petition (or some other pleading) which the Dismissal Order does not rule is not before the Court but merely erroneously states is not "properly" before the Court.

Mr. Goetz further asserted:

> taking the erroneous holding that the absence of a Rule 41.03 order keeps the May 31, 2019 notice of partial nonsuit from being effective to be a correct holding, the supposedly "missing" Rule 41.03 order, according to the Dismissal Order rational, makes the July 29 Petition "properly" before the Court, i.e., the Dismissal Order, in substance, is the theretofore "missing" Rule 41.03 order.

He also asserted that

> the Dismissal Order erroneously adjudicates standing based on standards applicable to an *in personam* suit by an *in personam* plaintiff seeking *in personam* recovery to compensate for *in personam injuries*, none of which appertain in the instant case.

Finally, Mr. Goetz argued that the trial court had "misconstrue[d]" the purpose of citations in his brief to cases in which a trial court held a party in contempt for the violation of a court order and submitted that the purpose of the citations was "to document that civil courts have jurisdiction to adjudicate cases where the subject matter is whether the defendant is guilty of criminal contempt, without any limitation on the case in which the criminal contempt occurred."[3]

The Autins opposed Mr. Goetz's motion to alter or amend. Following a hearing in November 2021, the trial court denied the motion by order of March 7, 2022. Mr. Goetz filed a notice of appeal in this Court on March 29, 2022. On April 3, Mr. Goetz filed a

[3] In his October 2021 motion to amend, Mr. Goetz also stated:

> the Dismissal Orders above quoted words speak a personal state of mind (i.e., a prejudgment that Petitioner's lawsuit, in the opinion of the judge, is not one that should be prosecuted) that, reasonably construed, raises an unanswered question, not here sought to be resolved, about whether the adjudicator adjudicated the Dismissal Order with an unconstitutional appearance (actualities aside) of undermined neutrality.

Tennessee Rule of Appellate Procedure 22 motion, wherein he moved the Court

> to dismiss the instant appeal on the ground that the "judgment" of the trial court *is coram non judice* (a non-judgment) because (1) the case below terminated on May 31, 2019 by Movant's filed notice of voluntary nonsuit and (2) by the fact that the appellate jurisdiction of this Court does not enable this Court to review *a coram non judice* non-judgment of a trial court; therefore, the appeal must be dismissed with a mandate (in the nature of a writ of mandamus) to the trial court ministerially to enter the pro forma order required to be ministerially entered following the filing of a voluntary nonsuit.

On April 12, 2022, we denied the motion on our determination that it did not comply with Tennessee Rules of Appellate Procedure 22.

Meanwhile, on November 10, 2021, Mr. Goetz filed, in the trial court, a motion to "summary dismiss" the Autins' motion for Rule 11 sanctions as "non-justiciable." In his motion, Mr. Goetz asserted that the Autins' motion became moot following his May 2019 notice of partial nonsuit pursuant to Rule 41.01. He asserted that entry of an order of nonsuit by the trial court was "purely a ministerial act," and that unlike a judgment, which is an action of the court, "[t]he ministerial entry of the pro forma order is an adjudicator's act." Mr. Goetz submitted that "[f]ailing to keep in mind that adjudicators are not courts sometimes causes confused thinking." He argued:

> Where a notice of nonsuit has been filed, the nonsuit has been "taken," and this is the equivalent of a judgment previously rendered by the court, even though the court had nothing to do with or control over whether the plaintiff took (past tense) the nonsuit. The nonsuit happened and automatically imposed on the adjudicator a ministerial duty (enter a pro forma order) over which the adjudicator has no more control than the adjudicator had any control over the plaintiff noticing [taking] the nonsuit.

Mr. Goetz asserted that the May 2019 "nonsuit eliminated the Sanctions Motion, rendering it the same as if never filed and rendering the case, in its entirety, as if the case was never filed and rendering the Court jurisdictionless in relation to the Sanctions Motion as well as the then yet to be filed motion to dismiss." The trial court heard the matter on December 7 and denied Mr. Goetz motion to dismiss the Autins' motion for sanctions by order entered March 7, 2022. The trial court determined the motion was not moot because "[a]t no time prior to the entry of the Order Granting the Motion to Dismiss did counsel for Plaintiff attempt to enter an Order of Voluntary Non-suit dismissing a portion or all of its case, instead proceeded to zealously litigate this matter throughout." The trial court determined that it retained jurisdiction to adjudicate the Autins' motion for sanctions after it granted their motion to dismiss with prejudice.

On April 4, 2022, Mr. Goetz filed a "Notice of Candidacy" to

> give[] notice that counsel of record for Petitioner has a pending candidate nominating petition, awaiting approval on confirming the nominating signatures to become a candidate for election to serve as Circuit Judge, Division 8 of the Shelby County, Tennessee Circuit Court, Thirtieth Judicial District of Tennessee (Exhibit A hereto), an office for which The Honorable Robert S. Weiss, Circuit Court Judge, is a candidate in the same election.

In his notice, Mr. Goetz stated that he would not make a motion for recusal but asserted:

> Williams v. Pennsylvania**,** 579 U.S. 1 (2016) has dispensed with the necessity for motions to recuse and shifted to judges the burden, *sua sponte*, to withdraw if, objectively considered (rather than the judge's subjective belief), a neutral third person, would consider that a factor known to the judge would appear to such third person to undermine the judge's neutrality, irrespective of whether, in actuality, the factor would undermine the judge's neutrality. Thus, whether The Honorable Robert S. Weiss chooses to withdraw is a choice for The Honorable Robert S. Weiss to make and the choice will be reviewed, if necessary, on the record appeal.

The trial judge *sua sponte* recused himself on April 6, and the matter was assigned to Division V of the circuit court. Mr. Goetz filed a motion to stay further proceeding pending a ruling by this Court with respect to his March 2022 notice of appeal of the trial court's order granting the Autins' motion to dismiss. The trial court heard the motion on April 22, and denied it by order entered April 26, 2022.

The trial court also heard the Autins' motion for sanctions pursuant to Rule 11.03 on April 22, 2022. By order entered May 2, 2022, the trial court determined that Rule 11 sanctions against Mr. Goetz's attorney, Larry E. Parrish ("Mr. Parrish"), were warranted.

In its May 2022 order, the trial court found that: (1) the March 14, 2019 compliant filed by Mr. Parrish on behalf of Mr. Goetz sought reimbursement in an amount not less than $500,000.00; (2) the court did not enter any order on the notice of "partial dismissal" filed in 2019; (3) Mr. Parrish neither requested nor sought "voluntary dismissal of the Contempt Petitions as a whole[;]" (4) the court specifically reserved the issue of sanctions in its September 2021 order dismissing the contempt petitions for failure to state of claim and for lack of subject-matter jurisdiction; and (5) Mr. Parrish nevertheless filed a motion to dismiss the Autins' motion for sanctions as moot and nonjusticiable. The trial court found:

> Parrish premised the Contempt Petitions on claims that Respondents were in contempt because of behavior as plaintiffs in a 2010 lawsuit. The Contempt Petitions, like pleadings in prior suits in 2012, 2016, 2017, and 2018 [filed] by Petitioner, alleged perjury and abuse of process[.] The only difference is the Contempt Petitions seek redress for Respondents' alleged contempt by perjury and abuse of process instead of seeking redress for alleged perjury and abuse of process. The possibility the Contempt Petitions were signed and filed in good faith is remote inasmuch as, at the time Parrish signed and filed the Contempt Petitions, the court had already determined and the Court of Appeals had affirmed that the earlier cases alleging perjury and abuse of process did not state claims upon which relief could be granted. The behavior outlined in the Contempt Petitions simply is not the basis for causes of action cognizable in Shelby County Circuit Court. It is not likely that an attorney with Parrish's years of experience and expertise could in good faith believe the claims in the Contempt Petitions were "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law."
>
> The lawsuit in its entirety and various pleadings in this case, even Parrish's pleadings related to the Rule 11 motion, are spurious.
>
> . . .
>
> In addition, Parrish asserted in his motion to dismiss Respondents' motion for sanctions that his notice of nonsuit (which was filed after Respondents' Rule 11 motion) rendered the Rule 11 motion nonjusticiable. Such a result would mean that attorneys could avoid Rule 11 sanctions by filing a notice of nonsuit of the underling action once an opposing party files a Rule 11 motion. Parrish certainly knew or should have known his pleading was without merit. Parrish is an experienced lawyer who has been practicing law for over fifty years[.] Parrish's client did not prepare, sign, or file the pleadings and would not know whether the claims and representations made therein are warranted under Tennessee law. Pursuant to Rule 11.03(2)(a), the court may not award monetary sanctions against a represented party for a violation of subdivision 11.02(2). Parrish violated Rule 11.02(2). The court, therefore, awards the sanctions directly against Parrish.

The trial court found that the Autins' attorney filed an affidavit stating that the Autins incurred attorney's fees of more than $20,000.00 to "address[] the blatantly frivolous claims in this case." The trial court assessed monetary sanctions against Mr. Parrish in the amount of $3,000.00, an amount "not so much as to be debilitating, but [] enough [to] meet the purpose of Rule 11." The trial court ordered Mr. Parrish to pay this amount to the Autins, through their legal counsel, within 30 days of entry of the order.

On May 3, 2022, Mr. Goetz filed a Tennessee Rule of Civil Procedure 59.04 motion to alter or amend the trial court's order. In his motion, Mr. Goetz asserted that the sanctions awarded by the trial court were "in an amount and against a person different from the May 21, 2019 Rule 11 sanctions motion." Mr. Goetz asserted that "primary reasons" to alter or amend the judgment were those set forth in his May 2, 2022 application for permission to appeal to the Tennessee Supreme Court, which were "attached as Exhibit A hereto and[] incorporated herein by reference as if quoted here verbatim." Neither the application to the supreme court nor "Exhibit A" are included in the record transmitted to this Court.

Mr. Goetz also stated that he filed a notice of appeal to this Court on March 29, 2022, and that "[i]f the notice of appeal was prematurely filed, how the COA wishes to remedy the problem is a call of the COA, not this [c]ourt. For instance, the 30-day appeal time could restart when this Rule 59.04 motion is decided. Or the current notice of appeal may be deemed sufficient. There are other options." He additionally submitted that "[t]he May 2, 2022 decision by this [c]ourt, in the respectful opinion of plaintiff, is subject to rescission for other reasons, but, because the above reasons are case-dispositive, there is no need to elongate this motion." The trial court denied the motion on June 8, 2022.

Mr. Goetz filed a notice of appeal to this Court on June 21, 2022. On July 7, he filed a motion to consolidate the appeal with his March 2022 appeal of the trial court's order dismissing the case. We granted the consolidation motion on July 19, 2022.

II. ISSUES

Mr. Goetz raises the following issues for our review, as stated in his brief:

> 1) When, on May 31, 2019, State, in strict accord with Tennessee Rules of Civil Procedure, Rule 41.01(1), timely filed a written Notice of Partial Nonsuit when no motion for summary judgment was pending, did the trial court's subject matter jurisdiction, then and there, dissipate negating the authority of the trial court to further adjudicate the case, leaving the trial court only the authority to "sign" the ministerial order which Tennessee Rules of Civil Procedure, Rule 41.01(3) directs "must" follow a "voluntary nonsuit?"
>
> 2) When, on May 31, 2019, State filed a written Notice of Partial Nonsuit, did the trial court reversibly err by refusing to "sign" the ministerial order which Rule 41.01(3) directs "must" follow a "voluntary nonsuit?"
>
> 3) When appellant's written Notice Of Partial Nonsuit was filed, on May 31, 2019, did the filed notice effectuate a voluntary dismissal without prejudice of the entire suit or merely the part of the suit stated in the notice to be nonsuited?

4) After, on May 31, 2019, State's Notice Of Partial Nonsuit was filed, are all proceedings conducted in the trial court *coram non judice*?

5) Presuming that no voluntary nonsuit was effectuated on May 31, 2019, did the trial court reversibly err in entering, the September 29, 2021 order dismissing the case, pursuant to Rule 12.02(6), for failure to state a claim and for lack of subject matter jurisdiction.

6) Presuming that no voluntary nonsuit was effectuated on May 31, 2019, did the trial court reversibly err in imposition of monetary sanctions, pursuant to Tennessee Rules of Civil Procedure, Rule 11.03, on counsel for State for initiating the case by the First Amended Petition.

(Citations to record omitted).

The Autins present the following issues, as stated in their brief:

1) Is Goetz acting on relation of the State of Tennessee, or as an individual person?

2) Did Goetz's Notice of Partial Nonsuit Without Prejudice effectuate a nonsuit of the First Amended Petition for Criminal Contempt?

3) Did the trial court commit reversible error by entering the Dismissal Order?

4) Did the trial court commit reversible error by entering the Sanctions Order?

5) Is Goetz's current appeal frivolous1 pursuant to Tenn. Code Ann. § 27-1-122?

The Autins specifically designate their prayer for sanctions on appeal as an issue for our consideration.

III. STANDARD OF REVIEW

A trial court's dismissal of a lawsuit for failure to state a claim under Tennessee Rule of Civil Procedure 12.02(6) presents a question of law. ***Elvis Presley Enter., Inc. v. City of Memphis***, 620 S.W.3d 318, 323 (Tenn. 2021) (citation omitted). A trial court's determination that the doctrine of *res judicata* bars a claim also involves a question of law, ***Regions Bank v. Prager***, 625 S.W.3d 842, 848 (Tenn. 2021) (citations omitted), as does a

trial court's decision regarding the issue of standing. ***Metro. Gov't of Nashville & Davidson Cnty. v. Tennessee Dep't of Educ.***, 645 S.W.3d 141, 147 (Tenn. 2022) (citation omitted). Our review of a trial court's determinations on questions of law is *de novo* with no presumption of correctness. ***Cooper v. Mandy***, 639 S.W.3d 29, 33 (Tenn. 2022).

The Tennessee Rules of Civil Procedure are promulgated by the Tennessee Supreme Court, approved by the General Assembly, and "have the force and effect of law." ***Hall v. Haynes***, 915 S.W.3d 564, 571 (Tenn. 2010) (internal quotation marks omitted in original) (quoting ***Frye v. Blue Ridge Neurosci. Ctr., P.C.,*** 70 S.W.3d 710, 713 (Tenn. 2002) (quoting ***Crosslin v. Alsup,*** 594 S.W.2d 379, 380 (Tenn. 1980))). Accordingly, the interpretation of the Rules also is a question of law which we review *de novo* with no presumption of correctness for the determinations of the trial court. ***Thomas v. Oldfield***, 279 S.W.3d 259, 261 (Tenn. 2009).

IV. ANALYSIS

We first address the statement in Mr. Goetz's brief that: "This case must be viewed through the 'eyes of the law' and not by the eyes of humans, no matter whether the humans are ordinary citizens or judges." Mr. Goetz submits, "[i]f the human perspective is taken, a viewer will see an ongoing dispute between three private parties, i.e., Appellees [the Autins] and Defendant Goetz. A human view will dictate a result that is very likely to be opposite of the law's view. This is the basis of the error about which generated this appeal." We read this statement as a less eloquent reiteration of Aristotle's famous dictate that, "The law is reason free from passion." We assure Mr. Goetz that, as is its usual practice, this Court will do its utmost to apply the law to the facts of this case without imposition of bias or prejudice. Turning to that task, we first note Mr. Goetz's contentions that Appellees were "prosecuted by a relator (substitute district attorney), the identity of whom is totally irrelevant, as is the identity of the lawyer for the relator" and "there has never been a prior lawsuit between the State and Appellees[, and] . . . the facts at issue have never before been litigated." Furthermore, the cover of Mr. Goetz's brief contains a footnote, stating:

> The Petition which initiated this case was and remained filed pursuant Tennessee Code Annotated § 29-9-102 and § 29-9-105 initiating a case on relation of the State of Tennessee by William Goetz which, properly should have been styled "State of Tennessee *ex rel.* William Goetz v. Donel Autin And Dana Autin" instead of mistakenly styled "William Goetz v. Donel Autin And Dana Autin."

For the first time in his brief, Mr. Goetz refers to the Appellant in this matter as "the State."

The flaw in Mr. Goetz's argument is that neither Mr. Goetz nor Mr. Parrish represent the State of Tennessee. Importantly, the record reflects that the Shelby County District Attorney refused Messrs. Goetz and Parrish's invitation to prosecute this matter. There is

nothing to indicate that either Mr. Parrish or Mr. Goetz possessed any authority—actual, implied, or apparent—to represent or speak for the State of Tennessee in this matter.

In Tennessee, a private attorney may prosecute a contempt action to enforce an order of the court. ***Wilson v. Wilson***, 984 S.W.2d 898, 903 (Tenn. 1998). Such action is governed by Tennessee Rule of Criminal Procedure 42(b). From our review, it is clear that, although styled as a petition for criminal contempt, Mr. Goetz's March 2019 petition did not comply with Rule 42(b) and was not filed to enforce a court order. Rather, Mr. Goetz's March 2019 petition asserted a criminal action for "aggravated perjury in violation of Tennessee Code Annotated section 39-16-703(a), a Class D felony[.]" Despite Appellant's contention that Mr. Parrish was serving as "substitute district attorney" in this "ex rel" action, neither ***Wilson*** nor the other cases cited by Mr. Goetz stand for the proposition that a private attorney prosecuting a contempt action is equivalent to a district attorney or deputy district attorney. In fact, the ***Wilson*** court specifically stated: "private attorneys prosecuting criminal contempt actions in Tennessee are not ordinarily clothed with all the powers of a public prosecutor. Indeed, there is no hint in this appeal that the defendant's attorney has been given the powers of the public prosecutor in pursuing these contempt actions." ***Id.*** at 904.

Tennessee Code Annotated sections 8-7-401 and 8-6-106 are the two statutes that authorize a district attorney to use a private attorney to prosecute a matter. ***State v. Culbreath***, 30 S.W.3d 309, 314 (Tenn. 2000). Although section 8-7-401 permits the victim of a crime to employ private legal counsel, private counsel acts "as co-counsel with the district attorney general or the district attorney general's deputies in trying cases, with the extent of participation of such privately employed counsel being *at the discretion of the district attorney general*." Tenn. Code. Ann. § 8-7-401(a) (emphasis added). The section further requires the district attorney general or a deputy to make the "final and concluding argument[]" in the matter. ***Id.*** As noted above, the Shelby County District Attorney explicitly declined to pursue this matter. The statute also provides:

> (b)(1) No private legal counsel employed as a special prosecutor pursuant to subsection (a) is permitted to participate in any criminal hearing, trial or other proceeding unless the defendant or defendants have been notified and the court has conducted a hearing on such employment as provided in subdivision (b)(2).
>
> (2) At such hearing, the defendant or defendants have the right to be present and to raise and preserve any objections to the employment of such special prosecutor as provided by law. The court shall examine the private counsel to be employed and shall make a specific finding as to whether such person is or is not qualified under the law to serve as special prosecutor and as to whether such person has or does not have a conflict of interest as provided by law.

Tenn. Code Ann. § 8-7-401(b).

> Tennessee Code Annotated section 8-6-106 provides:
>
> (a) In all cases where the interest of the state requires, in the judgment of the governor and attorney general and reporter, additional counsel to the attorney general and reporter or district attorney general, the governor shall employ such counsel, who shall be paid such compensation for services as the governor, secretary of state, and attorney general and reporter may deem just, the same to be paid out of any money in the treasury not otherwise appropriated, upon the certificate of such officers certifying the amount to the commissioner of finance and administration.
>
> (b) Notwithstanding this section or any other law to the contrary, the attorney general and reporter or district attorney general shall inform the governor of, and consideration shall be given to, whether the person or firm to be employed as additional counsel:
>
> (1) To defend the state in any action is then serving as counsel for a party in any action by that party against the state and whether the action, if adjudicated in that party's favor, is likely to result in an increase in state expenditures; or
>
> (2) To prosecute any action on behalf of the state is then serving as counsel in defense of any action against the state.

It is clear that none of the statutory requisites were met in this case.

Additionally, even if we assume, *arguendo*, that a private citizen has standing to prosecute an action in the name of the State of Tennessee—an assumption which we do not make—the amended complaint filed by Mr. Parrish as legal counsel for Mr. Goetz is styled "WILLIAM GOETZ, Petitioner, v. DONEL AUTIN and DANA AUTIN, Respondents." Mr. Goetz did not seek leave of the court to amend his complaint at any time. Mr. Goetz's May 2019 pleading styled "Notice of Partial Nonsuit Without Prejudice" merely deleted certain prayers for damages. Even assuming that Mr. Goetz pleading constituted a notice of dismissal within the meaning of Tennessee Rule of Civil Procedure 41.01, the pleading he filed in July 2019 did not change the nature of Mr. Goetz's complaint.

Having determine the nature of Mr. Goetz's March 14, 2019 complaint, we turn to our review of the trial court's judgment.

A. The "Notice of Partial Nonsuit"

We turn next to Mr. Goetz's issues concerning his May 2019 notice of partial nonsuit. The third issue presented, as we restate it, is whether the May 2019 filing of "partial nonsuit" effectuated a voluntary dismissal of the entirety of his Mr. Goetz's action.

In the Argument section of his brief, Mr. Goetz makes no argument on this issue. Rather, he merely supplies excerpts from two unpublished opinions of this Court. We may consider an issue waived when it is not addressed or developed in the argument section of the appellant's brief. ***Childress v. Union Realty Co.***, 97 S.W.3d 573, 578 (Tenn. Ct. App. 2002). Notwithstanding the insufficiency of Mr. Goetz's argument on this issue, Mr. Goetz's May 2019 notice clearly sought a "partial" nonsuit. Furthermore, the pleading he filed in July 2019 merely reiterated the actions asserted in his March 14, 2019 complaint, but it abandoned his prayer for monetary damages.[4] As such, this issue is without merit.

We next turn to whether the May 2019 notice constituted a notice of nonsuit within the meaning of Tennessee Rule of Civil Procedure provide 41.01, which provides:

> (1) Subject to the provisions of Rule 23.05, Rule 23.06, or Rule 66 or of any statute, and except when a motion for summary judgment made by an adverse party is pending, the plaintiff shall have the right to take a voluntary nonsuit to dismiss *an action* without prejudice by filing a written notice of dismissal at any time before the trial of a cause and serving a copy of the notice upon all parties, and if a party has not already been served with a summons and complaint, the plaintiff shall also serve a copy of the complaint on that party; or by an oral notice of dismissal made in open court during the trial of a cause; or in jury trials at any time before the jury retires to consider its verdict and prior to the ruling of the court sustaining a motion for a directed verdict. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of plaintiff's motion to dismiss, the defendant may elect to proceed on such counterclaim in the capacity of a plaintiff.
>
> (2) Notwithstanding the provisions of the preceding paragraph, a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has twice dismissed in any court an action based on or including the same claim.
>
> (3) A voluntary nonsuit to dismiss an action without prejudice must be followed by an order of voluntary dismissal signed by the court and entered by the clerk. The date of entry of the order will govern the running of

[4]Other than omitting prayers for monetary damages, Mr. Goetz's July 2019 filing was identical to his March 14, 2019 first amended complaint.

pertinent time periods.

Tenn. R. Civ. P. 41.01 (emphasis added).

As the trial court found, Mr. Goetz did not seek dismissal of any "action" in his "notice of partial nonsuit." For the purposes of the Rule, an action is that "which is commenced with the filing of a complaint with the clerk of the court." Tenn. R. Civ. P. 3. In his May 2019 notice, Mr. Goetz only sought to delete certain claims for damages. As such, the filing was not a Rule 41.01 notice of voluntary dismissal of the action. Rather, it was an attempt to amend the March 14, 2019 complaint. Because Mr. Goetz's May 2019 notice was not a notice of dismissal within the meaning of Rule 41.01, the trial court did not err in declining to sign the notice, and the court retained jurisdiction over Mr. Goetz's March 14, 2019 complaint. The foregoing analysis also negates Mr. Goetz's first, second, and fourth issues.

B. Dismissal for Failure to State a Claim and Lack of Subject-Matter Jurisdiction

We turn next to the fifth issue presented by Mr. Goetz, which we restate as whether the trial court erred by dismissing his March 2019 complaint for failure to state a claim and for lack of subject-matter jurisdiction.

As this Court recently reiterated:

> It is well-settled that a Tennessee Rules of Civil Procedure Rule 12.02(6) motion to dismiss for failure to state a claim tests "'only the legal sufficiency of the compliant, not the strength of the plaintiff's proof or evidence.'" ***Elvis Presley Enter., Inc. v. City of Memphis***, 620 S.W.3d 318, 323 (Tenn. 2021) (quoting ***Webb v. Nashville Area Habitat for Humanity, Inc.***, 346 S.W.3d 422, 426 (Tenn. 2011)). When considering a motion filed under the rule, the trial court must determine whether the allegations of the complaint, if considered true, constitute a cause of action as a matter of law. ***Id.*** (citation omitted). "The resolution of a 12.02(6) motion to dismiss is determined by an examination of the pleadings alone." ***Webb. v. Nashville Area Habitat for Humanity***, 346 S.W.3d 422, 426 (Tenn. 2011).
>
> When considering a motion to dismiss, the trial court "'must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.'" ***Id***. (quoting ***Tigg v. Pirelli Tire Corp.***, 232 S.W.3d 28, 31-32 (Tenn. 2007) (quoting ***Trau-Med of Am., Inc. v. Allstate Ins. Co.***, 71 S.W.3d 691, 696 (Tenn. 2002))) (additional citations omitted). It should grant the motion "'only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.'" ***Id.*** (quoting ***Crews v. Buckman Labs.***

> ***Int'l, Inc.***, 78 S.W.3d 852, 857 (Tenn. 2002)) (additional citations omitted). "A Rule 12.02(6) motion to dismiss admits the truth of all of the relevant and material allegations contained in the complaint, but it asserts that the allegations fail to establish a cause of action." ***Leach v. Taylor***, 124 S.W.3d 87, 90 (Tenn. 2004).

McGinnis Oil Co. LLC v. Bowling, No. W2021-01104-COA-R3-CV, 2022 WL 15596054, at *3 (Tenn. Ct. App. Oct. 28, 2022).

As his argument on this issue, Mr. Goetz's brief merely cites caselaw related to the foregoing standard, after which he surmises that:

> Respectfully stated, the law presumes that the Statement of Facts will [be] found by a jury to be true. So considered, it is unimaginable that State "can prove no set of facts" which would amount to the criminal contempt of court pled in the First Amended Petition.

As noted above, the State of Tennessee is not a party to this appeal. As also noted above, we may consider an issue waived when it is not addressed or developed in the argument section of the appellant's brief. ***Childress***, 97 S.W.3d at 578. For these reasons, the issue is without merit and is, otherwise, waived.

C. Sanctions

We turn to the sixth issue raised by Mr. Goetz. We restate that issue as whether the trial court erred by imposing monetary sanctions on Mr. Parrish pursuant to the Tennessee Rule of Civil Procedure 11.03.

Tennessee Rule of Civil Procedure 11.02 provides:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances—
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denial of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Rule 11.03 provides, in relevant part:

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (a) and (b), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(a) Monetary sanctions may not be awarded against a represented party for a violation of subdivision 11.02(2).

(b) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Tenn. R. Civ. P. 11.02(2).

The Tennessee Supreme Court has observed that "[t]he certification which results from the attorney's signature on a motion, pleading, or other document is directed at the three substantive prongs of Rule 11: its factual basis, its legal basis, and its legitimate purpose." ***Andrews v. Bible***, 812 S.W.2d 284, 287 (Tenn. 1991) (citations omitted). The attorney's "signature signifies to the Court that the signer has read the pleading, motion, or other paper, has conducted a reasonable inquiry into the facts and the law, and is satisfied that the document is well-grounded in both, and is acting without any improper motive." ***Id.*** (citations omitted). Under Rule 11, an attorney's signature is not meaningless. Rather, it signifies to the trial court that the document has merit. ***Id.*** at 287-88 (citations omitted). The rule's purpose "is to bring home to the individual signer his personal, nondelegable

responsibility." ***Id.*** at 288. The rule sends a message "'to the attorney [] that this is not a team effort but in the last analysis, *yours alone*[.]'" ***Id.*** (quoting ***Pavelic & LeFlore v. Marvel Entertainment Group****,* 493 U.S. 120, 110 S.Ct. 456, 460, 107 L. Ed.2d 438 (1989)) (emphasis in the original). The main purpose of Rule 11 is to deter "abuse in the litigation process." ***Id.*** at 292.

This Court has noted that:

> The courts are to apply a standard of "objective reasonableness under the circumstances" when determining whether conduct is sanctionable under Rule 11. ***Hooker v. Sundquist****,* 107 S.W.3d at 536 (citing ***Andrews****,* 812 S.W.2d at 288). "Sanctions are appropriate when an attorney submits a motion or other paper on grounds which he knows or should know are without merit, and a showing of subjective bad faith is not required." ***Id****.* (quoting ***Boyd v. Prime Focus, Inc.****,* 83 S.W.3d 761, 765 (Tenn. Ct. App. 2001)). However, when deciding whether to impose sanctions under Rule 11, the trial court should consider all the circumstances. ***Id.*** "[T]he trial judge should consider not only the circumstances of the particular violation, but also the factors bearing on the reasonableness of the conduct, such as experience and past performance of the attorney, as well as the general standards of conduct of the bar of the court." ***Andrews****,* 812 S.W.2d at 292 n.4.

Brown v. Shappley, 290 S.W.3d 197, 202–03 (Tenn. Ct. App. 2008).

We review a trial court's ruling on a Rule 11 motion for sanctions for an abuse of discretion. ***Id.*** at 200 (citation omitted). "An abuse of discretion occurs when the decision of the lower court has no basis in law or fact and is therefore arbitrary, illogical, or unconscionable." ***Id.*** (citations omitted). This deferential standard governs our review of this issue because "the question of whether a Rule 11 violation has occurred requires the trial court to make highly fact-intensive determinations regarding the reasonableness of the attorney's conduct." ***Id.*** (citation omitted). We review the trial court's factual findings with a presumption of correctness. ***Id.***; Tenn. R. App. P. 13(d).

In his brief, Mr. Goetz contends that the sanctions awarded by the trial court were "platformed on false presuppositions without which the (sic) is no basis in fact or law for the imposition of sanctions." He further asserts that "the capacity question is completely overlooked[]" and that "the instant criminal contempt civil case is by State against Appellees. Defendant Goetz has no capacity in the instant case other than as a substitute district attorney and, as a substitute district attorney, has never been a party to any prior case where Appellees were parties, except as a victim of the fraud described in the Statement Of Facts." Moreover, Mr. Goetz submits that he never "made any claim for relief for perjury" and contends:

> Secondly, even if the eyes of the law legitimately could be blinded, there is not a scintilla of evidence in the record of this case that Defendant Goetz sought any relief from Appellees for perjury and abuse of process claim are not the same as criminal contempt claims by a substitute district attorney.

Finally, Mr. Goetz asserts:

> The Sanctions Order includes the following: "Such a result would mean that attorneys could avoid Rule 11 sanctions by filing a notice of nonsuit of the underlying action once an opposing party files a Rule 11 motion. Parrish certainly knew or should have known his pleading was without merit."
>
> At the time of the Notice Of Partial Nonsuit, the motion for sanctions had only been filed for 10 days. There was no order reserving anything, much less reserving a ruling on the sanctions motion. However, had there been such an order, the order was would have been totally neutral, i.e., as likely to have rule one way as the other. As to the effect of a notice of nonsuit on all interlocutory orders, before or after the notice of nonsuit.
>
> With due respect, the Sanctions Order is stated in words that essentially castigate counsel for State's relator without any just cause. The castigation loses sight of what is in the record and how the "eyes of the law" view the representation of counsel.

(Citations to record omitted).

As noted above, the State of Tennessee is not a party to this action, and Mr. Goetz's "notice of partial nonsuit" was not effective to transform his March 14, 2019 civil complaint into a criminal action asserted by the State on Mr. Goetz's behalf. Furthermore, it is well-settled that Tennessee does not recognize a civil action for perjury or for conspiracy to commit perjury. ***Felts v. Paradise***, 158 S.W.2d 727, 728 (Tenn. 1942) (holding: "It is the well-settled law that an action at law will not lie to recover damages for perjury alleged to have been committed in a former case in which the plaintiff might have been interested."); ***Whitaker v. Whirlpool Corp.***, 32 S.W.3d 222, 231 (Tenn. Ct. App 2000), *perm. app. denied* (Tenn. Sept. 25, 2000); ***Lacky v. Carson***, 886 S.W.2d 232, 232 (Tenn. Ct. App. 1994), *perm. app. denied* (Tenn. Sept. 6, 1994); ***Medlock v. Ferrari***, 602 S.W.2d 241, 245 (Tenn. Ct. App. 1979), *perm. app. denied* (Tenn. Nov. 13, 1979).

As previously discussed, the record reflects that the issue of the Autins' veracity has been asserted by Mr. Goetz many times throughout the protracted history of the case. From the record, the totality of the circumstance, and in view of Mr. Parrish's extensive experience as a member of the Bar, we conclude that the trial court did not abuse its

discretion by imposing sanctions against Mr. Parrish.

D. Sanctions on Appeal

We turn to the Autins' request for sanctions on appeal pursuant to Tennessee Code Annotated section 27-1-122, which provides:

> When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include, but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

The purpose of section 27-1-122 is "to discourage groundless appeals and to redress the harm imposed upon harassed appellees." ***Collins v. Willis***, No. 01A01-9808-CH-00433, 1999 WL 298261, at *4 (Tenn. Ct. App. May 13, 1999) (citing *see* ***Davis v. Gulf Ins. Group****,* 546 S.W.2d 583, 586 (Tenn. 1977)). An award of damages under the section, including attorney's fees, "rests in the appellate court's sound discretion." ***Eberbach v. Eberbach***, 535 S.W.3d 467, 475 (Tenn. 2017). However, "[w]e exercise our discretion under the statute sparingly so as not to discourage legitimate appeals." ***Whalum v. Marshall***, 224 S.W.3d 169, 181 (Tenn. Ct. App. 2006).

We have observed that "'[s]uccessful litigants should not have to bear the expense and vexation of groundless appeals.'" ***Id.*** (quoting ***Davis v. Gulf Ins. Group****,* 546 S.W.2d 583, 586 (Tenn. 1977). A frivolous appeal is one that has "'no reasonable chance of success.'" ***Id.*** (quoting ***Jackson v. Aldridge****,* 6 S.W.3d 501, 504 (Tenn. Ct. App. 1999). An appeal may also be considered frivolous if it is "'so utterly devoid of merit as to justify the imposition of a penalty[.]'" ***Id.*** (quoting ***Combustion Eng'g, Inc. v. Kennedy****,* 562 S.W.2d 202, 205 (Tenn. 1978)).

Mr. Goetz has challenged the Autins' veracity for more than a decade, through at least half a dozen trial court actions and four prior appeals. As the trial court noted, the attorney's fees in this dispute are staggering. The style of Mr. Goetz's complaints and his motions have become increasingly contrived, yet substantial resources have been expended to address his duplicative and spurious filings. The arguments espoused by Mr. Goetz and his attorney in the instant appeal are merely the latest of their many quixotic windmills. For the reasons discussed above, we conclude that the instant appeal is so devoid of merit that an award of sanctions against Mr. Goetz pursuant to section 27-1-122 is appropriate. Accordingly, the case is remanded to the trial court for determination of the Autins' reasonable damages incurred on appeal, including their costs and reasonable attorney's fees, and for entry of judgment on same. Any issues or arguments not specifically addressed in this opinion are pretermitted as unnecessary in view of our disposition of this matter.

IV. CONCLUSION

The judgment of the trial court is affirmed. The Autins' request for frivolous appeal damages is granted, and the case is remanded to the trial court for determination of such damages, entry of judgment on same, and for such further proceedings as may be necessary and are consistent with this opinion. Costs on appeal are taxed to the appellant, William Goetz, for which execution may issue if necessary.

S/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE